



4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

Docket No.: FAA-2014-0142

RIN 2120-AA66

Federal Contract Tower Safety Action Program (SAFER-FCT) and Air Traffic Safety Action Program for Engineers & Architects, Staff Support Specialists, Aviation Technical System Specialists (Series 2186) and Flight Procedures Team (ATSAP-X)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Order Designating Information as Protected from Disclosure; No comments received.

SUMMARY: This action affirms the order published in the FEDERAL REGISTER on April 3, 2015, regarding the application of Title 14, Code of Federal Regulations (14 CFR) Part 193, Federal Contract Tower SAFER-FCT Program and the Air Traffic Organization Engineers and Architects, Staff Support Specialist (Series 2186) and Flight Procedures Team (hereinafter "Region X") ATSAP-X Program. The Notice proposed that safety information provided to the FAA under the SAFER-FCT and ATSAP-X programs be designated by an FAA Order as protected from public disclosure in accordance with the provisions of 14 CFR Part 193, Protection of Voluntarily Submitted

Information. The designation is intended to encourage persons to voluntarily provide information to the FAA under the SAFER-FCT and ATSAP-X, so the FAA can learn about and address aviation safety hazards and implement, as appropriate corrective measures for events or safety issues.

DATES: Effective date: [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER.].

ADDRESSES: For information on where to obtain copies of documents and other information related to this action, see “How to Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION: For questions concerning this action, contact Ms. Coleen Hawrysko, Group Manager, Air Traffic Organization (ATO) Safety Programs, Federal Aviation Administration, 490 L’Enfant Plaza, Suite 7200, Washington, DC 20024; telephone (202) 267-8807, email: coleen.hawrysko@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Under Title 49 of the United States Code (49 U.S.C.), section 40123, certain voluntarily provided safety and security information is protected from disclosure in order to encourage persons to provide the information. In accordance with 14 CFR Part 193, Protection of Voluntarily Submitted Information, the FAA must issue an Order that specifies why the agency finds that the information should be protected. If the Administrator issues an Order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (Title 5 of the United States Code (5 U.S.C.), section 552) or other laws, except as

provided in 49 U.S.C. 40123, 14 CFR part 193, and the Order designating the information as protected. This Order is issued under part 193; section 193.11, which sets out the notice procedure for designating information as protected.

On April 3, 2015, the FAA published a notice of proposed order designating information provided under the SAFER-FCT and ATSAP-X programs as protected from disclosure under 49 U.S.C. 40123 and 14 CFR part 193. 80 FR 18168. The FAA noted that the designation of protected information is intended to encourage persons to voluntarily provide information to the FAA under the SAFER-FCT and ATSAP-X, so the FAA can learn about and address aviation safety hazards of which it was unaware or more fully understand and implement corrective measures for events or safety issues known by it through other means. The FAA invited public comment. No comments were submitted to the docket.

Applicability

The designation is applicable to any FAA office that receives information covered under this designation from SAFER-FCT and ATSAP-X, both of which will be incorporated in FAA Order JO 7200.20, Voluntary Safety Reporting Programs. Any other government agency that receives SAFER-FCT and ATSAP-X information covered under the designation from the FAA is subject to the requirements of 49 U.S.C. 40123 regarding nondisclosure of the information. Under § 193.7(e), each such agency must stipulate in writing, that it will abide by the requirements of section 40123, the provisions of part 193, and the Order designating SAFER-FCT and ATSAP-X as protected from public disclosure under 14 CFR part 193.

3. Summary

a. Qualified Participants. Region X employees who are covered under the Consolidated Collective Bargaining agreement (CBA) between NATCA and the FAA effective May 22, 2013, or its successor, and other employees identified in FAA Order 7200.22 which will be incorporated in FAA Order 7200.20, are eligible to complete a ATSAP-X report for events that occur while acting in that capacity. Vendor employees Union or Non-Union who are covered under the FAA and the Federal Contract Tower September 2011 contract, or its successor, and other employees identified in FAA Order 7200.20 are eligible to complete a SAFER-FCT report for events that occur while acting in that capacity.

b. Voluntarily-provided Information Protected from Disclosure Under the Proposed Designation.

Except for SAFER-FCT or ATSAP-X reports that involve possible criminal conduct, substance abuse, controlled substances, alcohol, or intentional falsification, the following information would be protected from disclosure:

- 1) the content of any report concerning an aviation safety or security matter that is submitted by a qualified participant under the SAFER-FCT or ATSAP-X that is accepted into either program, including the SAFER-FCT or ATSAP-X report, and the name of the submitter of the report. Notwithstanding the foregoing, mandatory information about occurrences that are required to be reported under FAA Orders or ATO guidance is not protected under this designation, unless the same information has also been submitted or reported under other procedures prescribed by the

Agency. The exclusion is necessary to assure that the information protected under this designation has been voluntarily submitted. It also permits changes to ATO Orders and guidance without requiring a change to this designation.

- 2) Any evidence gathered by the Event Review Committee during its investigation of a safety- or security-related event reported under SAFER-FCT or ATSAP-X, including the SAFER-FCT or ATSAP-X investigative file.

NOTE: The type of information or circumstances under which the information listed above would not be protected from disclosure is discussed in paragraph 3.b of this Order.

c. Ways to Participate. FAA employees who are qualified participants register for, and submit a report into, the system.

d. Duration of this Information-Sharing Program. This program continues as long as it is provided for by Order or a collective bargaining agreement.

4. Findings. The FAA designates information received from a SAFER-FCT or ATSAP-X submission as protected under 49 USC 40123 and 14 CFR 193.7, based on the following findings:

a. Summary of why the FAA finds that the information will be provided

voluntarily. The FAA finds that the information will be provided voluntarily.

This finding is supported by the significant increase in reports of safety-related matters since the implementation of voluntary safety reporting programs. No FAA or Vendor employee is required to participate in the SAFER-FCT or ATSAP-X.

b. Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety- related.

- (1) The following types of reports are ordinarily submitted under the SAFER-FCT or ATSAP-X:

- i. **Noncompliance reports.** Noncompliance reports identify specific instances of a failure to follow FAA directives.
- ii. **Aviation safety concern reports.** Aviation safety concerns that do not involve specific noncompliance with FAA directives. These may include, but are not limited to potential safety events or perceived problems with policies, procedures, and equipment.

(2) Region X employees support the design, delivery and efficiency of flight services throughout the National Airspace System (NAS) facilities, systems and equipment. Reports submitted by these employees under ATSAP-X ordinarily involve matters or observations occurring during the performance of their job responsibilities, and therefore the information submitted is inherently safety related. Vendor employees provide and support the provision of air traffic services at Federal Contract Tower facilities throughout the NAS. Reports submitted by these employees under SAFER-FCT ordinarily involve occurrences or problems identified or experienced during the performance of their job responsibilities which directly affect safety.

c. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Employees are unwilling to voluntarily provide detailed information about safety events and concerns, including those that might involve their own failures to follow Agency directives and policies, if such

information could be released publicly. If information is publicly disclosed, there is a strong likelihood that the information could be misused for purposes other than to address and resolve the reported safety concern. Unless the FAA can provide assurance that safety-related reports will be withheld from public disclosure, employees will not participate in the programs.

d. Summary of why the receipt of that type of information aids in fulfilling the FAA's safety responsibilities.

The FAA finds that receipt of information in SAFER-FCT or ATSAP-X reports aids in fulfilling the FAA's safety responsibilities. Because of its capacity to provide early identification of needed safety improvements, this information offers significant potential for addressing hazards that could lead to incidents or accidents. In particular, one of the benefits of both the SAFER-FCT and ATSAP-X is that they encourage the submission of narrative descriptions of occurrences that provide more detailed information than is otherwise available. The SAFER-FCT and ATSAP-X have produced safety-related data that is not available from any other source. Receipt of this previously unavailable information has provided the FAA with an improved basis for modifying procedures, policies, and regulations to improve safety and efficiency.

e. Consistencies and inconsistencies with FAA safety responsibilities.

The FAA finds that withholding SAFER-FCT and ATSAP-X information from public release is consistent with the FAA's safety responsibilities, because it encourages individuals to provide important safety information that it otherwise might not receive.

(1) Withholding SAFER-FCT and ATSAP-X information from disclosure, as described in this designation, is consistent with the FAA's safety responsibilities. Without

the Agency's ability to assure that the detailed information reported under these programs, which often explains why the event occurred or describes underlying problems, will not be disclosed, the information will not be provided to the FAA. Employees are concerned that public release of the information could result in potential misuses of the information that could affect them negatively. If the FAA does not receive the information, the FAA and the public will be deprived of the opportunity to make the safety improvements that receipt of the information otherwise enables. Corrective action under SAFER-FCT and ATSAP-X can be accomplished without disclosure of protected information. For example, for acceptance under both programs, the reporting employee must comply with ERC recommendations for corrective action, such as additional training for an employee. If the employee fails to complete corrective action in a manner satisfactory to all members of the ERC, the event may be referred to an appropriate office within the FAA for any additional investigation, reexamination, and/or action, as appropriate.

(2) The FAA may release SAFER-FCT or ATSAP-X information submitted to the agency, as specified in Part 193 and this Order. For example, to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified, summarized information that has been derived from SAFER-FCT or ATSAP-X reports or extracted from the protected information listed under paragraph 5b. The FAA may disclose de-identified, summarized SAFER-FCT or ATSAP-X information that identifies a systemic problem in the NAS, when a party needs to be advised of the problem in order to take corrective action. Under the current version of FAA Order N JO 7200.20, reported events and possible violations may be subject to investigation, reexamination, and/or action. Although the report itself and the content of the report are not used as evidence, the FAA may use the knowledge of the event or possible violation to generate an investigation, and, in that regard, the information is not protected from disclosure. To withhold information from

such limited release would be inconsistent with the FAA's safety responsibilities. In addition, reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling. The FAA may use such reports for enforcement purposes, and will refer such reports to law enforcement agencies, if appropriate. To withhold information in these circumstances would be inconsistent with the agency's safety responsibilities because it could prevent, or at least diminish the FAA's ability to effectively address egregious misconduct.

f. Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

(1) All employee SAFER-FCT and ATSAP-X reports are clearly labeled as such. Each employee must submit their own report.

5. DESIGNATION. The FAA designates the information described in paragraph 4b to be protected from disclosure in accordance with 49 U.S.C., section 40123 and 14 CFR part 193.

Issued in Washington, DC on [September 18, 2015](#)

Michael P. Huerta
Administrator, Federal Aviation Administration